S.B. CIVIL WRIT PETITION NO.474/2004

Manphool vs. Board of Revenue & ors.

Date : 20.10.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. SL Jain, for the petitioner.

Mrs. RR Kanwar, Dy.GA, for the respondents.

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Heard learned counsel for the parties.

Brief facts of the case are that the petitioner was allotted a piece of agricultural land on temporary cultivation lease in Chak 2AM in Murabba No.177/18 measuring 19 bighas. The petitioner applied for permanent allotment of land under the Rajasthan Colonisation (Allotment of Government Land to Post 1955 Temporary Cultivation Lease Holders and other landless persons in the Indira Gandhi Canal Project Area) Rules, 1971 (for short 'the Rules of 1971'). The petitioner was allotted land by order dated 23.1.1974 in Murabba No.177/88 in Kila No.1,6,7,10 to 25 measuring 19 bighas. According to the petitioner, he deposited the entire requisite amount for allotment and a sanad was issued in favour of the petitioner on 22.4.1984. According to the petitioner, when survey was conducted, then it was found that out of 25 bighas land, 11 bighas 3 biswas land is not getting water supply and, therefore, part of petitioner's land was declared as uncommand land. In view of the above, the

petitioner could apply for allotment of further land and, therefore, the allotting authority allotted the petitioner land measuring 5 bighas 12 biswas uncommand land in Murabba No.176/32 in Kila NO.1 to 4, 7 and 8 by order dated 10.5.1984. The petitioner when found that some land adjoining to Square No.176/32 is lying vacant, he applied for allotment of land measuring 10 bighas 6 biswas as small patch land under Rule 14 of the Rajasthan Colonisation (Allotment and Sale of Government Land in Indira Gandhi Canal Project) Rules, 1975 (for short' the Rules of 1975'). The petitioner was granted this land vide order dated 24.5.1984 as small patch land.

It appears that a complaint was made against the allotment of land to the petitioner being contrary to the Rules, upon which the District Collector, Sri Ganganagar by order dated 24.9.1994 cancelled the allotment of the petitioner's land. The petitioner preferred revision petition before the Board of Revenue which was allowed partly and the matter was remanded back to the allotting authority to decide the matter in the light of no objection issued by the Forest Department and to re-examine the total area allotted to the petitioner in exchange and on conversion of land to barani etc.

According to learned counsel for the petitioner, the matter was pending before the Collector after the remand order of Board of Revenue dated 27.5.1998 but an application was submitted by the Tehsildar (Revenue) Ghadsana under Rule 22(3) of the Rules of 1975 seeking cancellation of allotment order and one of the round was

that the land was illegally allotted to the petitioner because the land was not available for allotment. The contention of the State through Tehsildar was that the land in question is forest land. This application was opposed by the petitioner but the District Collector vide order dated 11.1.2000, after holding that the land in question is forest land, cancelled the allotment order passed in favour of the petitioner. The petitioner along with other persons preferred revision petition before the Board of Revenue. The Board of Revenue also took the same view and held that in view of the copies of jamabandi for SY 2043-2047, the land in question is forest land and was not available for allotment to the petitioner. In the backdrop of these facts, the petitioner has preferred this writ petition.

According to learned counsel for the petitioner, the respondent forest department gave a certificate that the land of Square No.176/32 of Chak 2NNM has not been allotted to the forest department and the revenue record may be corrected and in case, the land is allotted to the agriculturist, the forest department has no objection. According to learned counsel for the petitioner, in view of the above facts, the land in question is not a forest land.

Learned counsel for the petitioner further vehemently submitted that when the matter of allotment of land was pending before the competent authority after the remand order passed by the Board of Revenue, then the Tehsildar could not have submitted application under Rule 22(3) of the Rules of 1975 for cancellation of allotment made in

favour of the petitioner. It is also submitted that the District collector as well as Board of Revenue wrongly drawn the presumption about the land being forest land. It is submitted that the copies of jamabandi for the samwat year 2043-2047 only were produced but no revenue record was produced prior to samwat year 2043, therefore, the Board of Revenue was wrong in drawing inference about nature of the land on the basis of the copies of jamabandi for samwat year 2043-2047.

I have considered the submissions of learned counsel for the petitioner and have perused the facts of the case.

It is clear from the facts mentioned in the order dated 11.1.2000 passed by the collector as well as the order dated 13.4.2003 passed by the Board of Revenue that when the application was submitted for cancellation of the allotment order of the petitioner, notice was issued to the petitioner and he contested the issue before the District Collector that too without raising an objection that after the remand order passed by the Board of Revenue dated 27.5.1998, the case of the petitioner for allotment of small patch land is still pending. The petitioner contested the issue whether the land in question is forest land or not. It is not in dispute that the land at present is recorded in the revenue record as forest land. The Board of Revenue specifically dealt with the point in detail and held that the copy of the revenue record, jamabandi for the samwat year 2043-2047, has been placed on record, which shows that the land is recorded as forest land, then the

Board of Revenue was well justified in drawing presumption about continuity of the facts backward also about the nature of land. Despite this specific finding of fact, the petitioner did not produce copy of revenue record for the period prior to Samwat year 2043 to show that the presumption was wrongly drawn. Rather even the document submitted by the petitioner namely, letter (Annex.10) issued by the Forest Conservator, Indira Gandhi Canal Project clearly reveals that even forest department admitted that the entries in the revenue record is in the name of forest department. By this letter, they requested for correction in the revenue record. It is not the case of the petitioner that, that request was accepted by the State. Therefore, it is admitted case of the parties that at the relevant time, the land in question was recorded as forest land and this fact was and is in the knowledge of the petitioner and the forest department. Despite this fact, having forest land entries in the revenue record, how the letter Annex.10 was issued has not been explained. When the land has already been recorded in the revenue record to be forest land, then what was the reason for passing any other separate order for allotting land to the forest department, that is also not shown by the petitioner. Not only this, the petitioner even did not produce any copy of jamabandi in this writ petition to show the land to be not forest land but government unoccupied land available for allotment.

In view of the above documentary evidence, if the

Collector has decided the question of fact on the basis of documentary evidence and that has been upheld by the Board of Revenue and the presumption drawn has not been rebutted by the petitioner, it cannot be held that the land in question was unoccupied land available for allotment and not forest land.

So far as the contention of the petitioner that his case for examining the matter afresh after the remand order passed by the Board of Revenue dated 27.5.1998 is concerned, it is clear from the remand order itself that the matter was remanded for examining whether the land is forest land or not after taking into consideration the letter (Annex.10) which is relied upon by the petitioner and referred above. This has been done by the Collector after giving notice to the petitioner under Rule 22(3) of the Rules of 1975 and the proceedings which were decided by the Collector by order dated 24.9.1994 were also under the same Rule 22(3) is clear from the copy of order dated 24.9.1994 and the copy of order passed by the Board of Revenue dated 27.5.1998. In view of the above, there is no force in the submission of learned counsel for the petitioner that two matters are separate. In fact, the matter has been finally decided by the order of Collector dated 11.1.2000 which was upheld by the Board of Revenue vide order dated 30.4.2003. The obvious reason for not raising such objection by the petitioner before the learned Collector and Board of Revenue which has been sought to be raised in this writ petition may be that the petitioner was

fully aware that the proceedings under Rule 22(3) were remanded and the point involved is one and the same i.e. What is the effect of the letter issued by the forest department and whether the land in question is forest land or not. Therefore, the petitioner cannot be permitted to raise this ground in writ petition which was not raised before the two authorities who decided the matter.

In view of the above, I do not find any merit in this this writ petition and the same is hereby dismissed.

After arguing the case on merits at length, learned counsel for the petitioner, after knowing the view of the Court, submitted that another writ petition no.5461/2003 has already been admitted by this Court (by me) by order dated 4.3.2005. Since, in the above case, this Court has not decided the controversy but only passed the order to admit the petition but in the present case, learned counsel for the petitioner invited the Court's attention to all documents and argued the case on merits, this Court has no option but to decide the writ petition in accordance with law, therefore, the admission of earlier writ petition which has been shown after arguing the case on merits and knowing the view of the Court, is of no consequence and the writ petition cannot be admitted simply because similar writ petition was admitted by this Court, hence, this writ petition is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya